

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT GROVES,

Defendant-Appellant.

UNPUBLISHED

March 2, 2010

No. 290265

Oakland Circuit Court

LC No. 2008-222765-FC

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

MEMORANDUM.

A jury acquitted defendant of an original charge of armed robbery, MCL 750.529, but convicted him of the lesser offense of unarmed robbery, MCL 750.530. He was sentenced to a prison term of 8 to 30 years. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court's jury instructions and the verdict form erroneously failed to indicate that the jury could find defendant either not guilty generally or not guilty of the lesser included offenses. See *People v Wade*, 283 Mich App 462, 468; 771 NW2d 447 (2009), rev'd 774 NW2d 919 (2009). We conclude that this claim of error is waived because defendant counsel answered no when asked if he had any objections to the instructions or verdict form. *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004); *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002); *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2002). Even if the issue was not waived, however, it is without merit. The trial court properly instructed the jury that it could find defendant guilty of the charged offense, guilty of a lesser offense, or not guilty, CJI2d 3.17, and the court used a verdict form that properly included a general not guilty option, CJI2d 3.26. Thus, there was no error, plain or otherwise. See *People v Gonzalez*, 256 Mich App 212, 225; 663 NW2d 499 (2003).

Defendant next argues that the trial court erred in denying his request for an instruction on the cognate lesser offense of retail fraud. Jury instructions that involve questions of law are reviewed de novo on appeal. *People v McMullan*, 284 Mich App 149, 152; 771 NW2d 810 (2009). We find no error. As defendant concedes, the law is clear that a trial court is only required to instruct the jury on a necessarily included lesser offense if such an instruction is requested and is supported by a rational view of the evidence. Instruction on a cognate lesser

offense is not permitted. *People v Nyx*, 479 Mich 112, 121; 734 NW2d 548 (2007); *People v Cornell*, 466 Mich 335, 355-359; 646 NW2d 127 (2002); *People v Reese*, 466 Mich 440, 446; 647 NW2d 498 (2002). While defendant may disagree with the law as it stands, this Court and all lower courts are bound by decisions of our Supreme Court. *People v Tierney*, 266 Mich App 687, 713; 703 NW2d 204 (2005).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Alton T. Davis